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No. 310.

# Supreme Court of the United States.

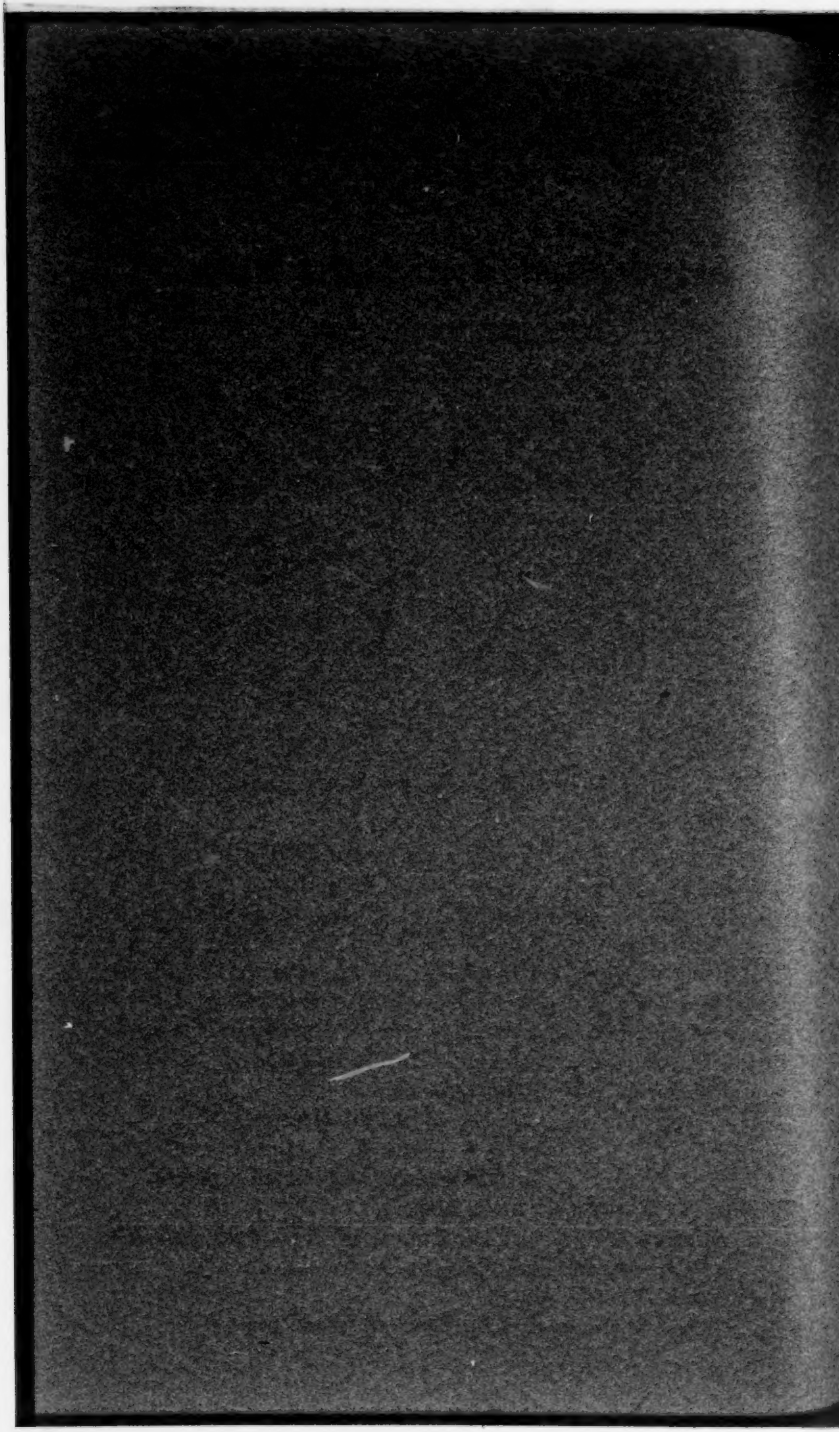
PEOPLE OF THE STATE OF NEW YORK, EX REL.
ALBERT J. HATCH,
*Plaintiff in Error,*
*against*

EDWARD REARDON, a Peace Officer of the County of New York,
*Defendant in Error.*

# MOTION TO ADVANCE.

JOHN G. MILBURN,
JOHN F. DILLON,
*Of Counsel for Plaintiff in Error.*

C. G. Burgoyne, Walker and Centre Street, N. Y.



# Supreme Court of the United States.

OCTOBER TERM, 1906.

PEOPLE OF THE STATE OF NEW YORK EX REL. ALBERT J. HATCH,
Plaintiff in Error,

AGAINST

EDWARD REARDON, a Peace Officer of the County of New York,
Defendant in Error.

No. 310,
October Term,
1906.

## Notice of Motion to Advance.

Please take notice that upon the record and all the proceedings herein, we shall, upon the 12th day of November, 1906, at the opening of the Court upon that day, or as soon thereafter as counsel can be heard, move the Supreme Court of the United States, at the Capitol, in the City of Washington, to advance this cause upon the docket of the Court for the October Term, 1906, and to set the same for argument at as early a date as may be convenient to the said Court.

Dated the 8th day of November, 1906.

JOHN G. MILBURN,
JOHN F. DILLON,
Of Counsel for Plaintiff in Error.

To WILLIAM TRAVERS JEROME, ESQ.,
District Attorney of the County of New York, and Attorney for Defendant in Error.

JULIUS M. MAYER, ESQ.,
Attorney General of the State of New York.

SUPREME COURT OF THE UNITED STATES.

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| THE PEOPLE OF THE STATE OF NEW YORK EX REL. ALBERT J. HATCH, Plaintiff in Error, AGAINST EDWARD REARDON, a Peace Officer of the County of New York, Defendant in Error. | No. 310 October Term, 1906. |

## Motion to Advance.

The plaintiff in error hereby moves this Honorable Court, upon the record and all the proceedings herein, to advance this cause upon the docket of the Court for the October Term, 1906, and to set the same for argument at as early a date as may be convenient to the Court.

Washington, D. C., the 12th day of November, 1906.

JOHN G. MILBURN,
JOHN F. DILLON,
Of Counsel for Plaintiff in Error.

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In view of the public interests involved, and of the desire of the State for an early decision, we hereby respectfully join in the above motion.

Dated New York, the 8th day of November, 1906.

WILLIAM TRAVERS JEROME,
District Attorney of the County of New York, and Attorney for the Defendant in Error.

JULIUS M. MAYER,
Attorney-General of the State of New York.

SUPREME COURT OF THE UNITED STATES.

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| PEOPLE OF THE STATE OF NEW YORK, EX REL., ALBERT J. HATCH, Plaintiff in Error, AGAINST EDWARD REARDON, a Peace Officer of the County of New York, Defendant in Error. | No. 310, October Term, 1906. |

# BRIEF OF PLAINTIFF IN ERROR ON MOTION TO ADVANCE.

## Statement.

This cause raises the question of the validity, under the Constitution of the United States, of Chapter 241 of the Laws of 1905 of the State of New York, entitled "An Act to Amend the Tax Law by providing for a tax on transfers of stock."

The act provides for a tax "on all sales, or agreements to sell, or memoranda of sales or deliveries or transfers of shares or certificates of stock in any domestic or foreign association, company or corporation, made after the first day of June, nineteen hundred and five, whether made upon or shown by the books of the association, company or corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale, whether entitling the holder in any manner to the benefit of such stock, or to secure the future payment of money or the future transfer of any stock, on each hundred dollars of face value or fraction thereof, two cents." It is provided that the payment of the tax shall be denoted by an adhesive stamp or stamps affixed either upon the books of the company, or upon the certificate transferred, or upon the bill or memorandum of sale, according to the nature of the transaction.

The act imposes both a criminal and a civil penalty for a violation of its provisions. It provides that any person making a sale without paying the required tax, or delivering any stock or evidence of the sale of any stock, or bill or memorandum thereof, without affixing the proper stamps, " shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than five hundred nor more than one thousand dollars, or be imprisoned not more than six months, or by both such fine and imprisonment at the discretion of the court." It further provides that " any person who shall violate the provisions of this article shall in addition to the penalties herein provided forfeit to the people of the State a civil penalty of five hundred dollars for each violation," to be collected in an action by the State Comptroller.

A copy of the act is hereto annexed.

On the seventh day of June, 1905, the relator, a citizen of the State of Connecticut, sold and delivered to one Charles W. Maury, likewise a citizen of Connecticut, in the City of New York, one hundred shares of the common stock of the Southern Railway Company, of the par value of one hundred dollars a share, for the sum of thirty dollars and seventy-five cents per share in cash, and one hundred shares of the common stock of the Chicago, Milwaukee and St. Paul Railroad Company, of the par value of one hundred dollars a share, for the sum of one hundred and seventy-two dollars a share in cash. The sums for which the shares were so sold were their then market value. The Southern Railway Company is a corporation organized under the laws of the State of Virginia, owning and operating a system of railroads situated wholly without the State of New York. The Chicago, Milwaukee and St. Paul Railroad Company is a corporation organized under the laws of the State of Wisconsin, owning and operating a system of railroads situated wholly without the State of New York. These sales were consummated by the delivery of two certificates of stock representing the shares sold, issued by the companies, respectively, assigned in blank, without the payment of the tax or the affixing of the stamps required by the act (Record, p. 2).

A complaint having been made by the said Maury, a warrant was issued, charging the relator with having committed a

misdemeanor, and the defendant in error, a peace officer of the County of New York, by virtue of the said warrant, arrested the relator and took him into custody (Record, pp. 2, 5, 6). Upon the relator's petition, a writ of *habeas corpus* was issued out of the Supreme Court of the State of New York; the defendant in error produced the relator before a Justice of that court, as directed by the writ, and made a return, to which the relator duly filed an answer (Record, pp. 9, 10, 12). The matter was thereupon heard by the Justice, who made a final order dismissing the writ and remanding the relator to the custody of the peace officer (Record, p. 13). This order was affirmed by the Appellate Division of the Supreme Court of the State of New York in and for the First Department (Record, pp. 15, 16), and the order of affirmance was likewise affirmed by the Court of Appeals of the State of New York (Record, pp. 33, 34). The records and proceedings in the cause were subsequently remitted to the Supreme Court of the State of New York in and for the County of New York, and the final order and judgment of the Court of Appeals was made and entered as the final order and judgment of the said Supreme Court (Record, pp. 34, 35). Upon the petition of the relator, a writ of error has been duly issued out of this Honorable Court to review the said final order and judgment (Record, p. 36).

The petition for the writ of *habeas corpus* duly raised the question of the constitutionality of the stock transfer tax act under the Constitution of the United States (Record, p. 3), and this matter was argued before and passed upon by the State courts. The majority and dissenting opinions in the Appellate Division of the Supreme Court (Record, pp. 17–33) are reported in 110 App. Div., 821, and the opinion of the Court of Appeals (Record, pp. 42–59) is reported in 184 N. Y., 431.

## Reasons for this Application.

### I.

The questions involved in this cause are of great and wide-spread importance, involving and affecting matters of general public interest. This is primarily a proceeding to test the validity of legislation of a novel character, of broad scope and far reaching effects, and of the greatest importance to the State of New York, to other States contemplating similar legislation, and to a vast number of persons, owners of corporate stocks, throughout the United States and even beyond its boundaries.

The act inaugurates a new system of taxation. It selects from the mass of property one particular species, and only that one, and forbids the sale or transfer of such property unless a tax is paid by the transferror. As the right to alienate property is an essential element of ownership, this act affects and impairs a fundamental right. It is arbitrary, not only in the selection of the subject upon which it acts, but in attributing to it a purely artificial valuation—the par value of the stock—and in basing the tax upon that valuation. The act, moreover, applies to all sales and transfers in the State, regardless of the facts that the seller, or buyer, or both, may be non-residents, that all of the property of the corporation, which the shares of stock represent, may lie outside the jurisdiction of the State, and that the certificates may have been brought into the State for sale and transfer as instruments of interstate commerce. Its scope is thus very broad, and the interest in the determination of the validity of the tax extends far beyond the confines of New York.

### II.

The statute has had extraordinary results in producing revenue since it went into effect on June 2, 1905. From figures furnished by the Comptroller of the State of New York,

it appears that during the fiscal year ending October 1, 1906, the State sold stamps under the act of the aggregate value of $6,631,903.22. The total income of the State during this same period from all sources of general indirect taxation amounted to approximately $32,000,000, of which the income accruing from the stock transfer tax represented about $20\frac{7}{10}$ per cent.

A statement of the revenue derived from the tax during each month of its existence up to and including the month of October, 1906, follows :

| | | |
|---|---|---|
| 1905, June | $440,301 | 66 |
| July | 308,790 | 80 |
| August | 477,665 | 36 |
| September | 372,501 | 68 |
| October | 405,784 | 50 |
| November | 607,152 | 20 |
| December | 728,409 | 38 |
| 1906, January | 911,321 | 10 |
| February | 490,498 | 86 |
| March | 427,200 | 64 |
| April | 560,300 | 64 |
| May | 503,571 | 76 |
| June | 424,071 | 48 |
| July | 406,046 | 68 |
| August | 795,044 | 30 |
| September | 608,629 | 56 |
| October | 617,466 | 04 |
| | $9,084,756 | 64 |

The fact that this cause involves the validity of so enormous a revenue is of the utmost pertinence upon this application to advance. The efficacy of this statute in producing revenue will undoubtedly induce the Legislature of the State of New York, should this tax be finally sustained, to extend this new system of taxation to other classes of property, arbitrarily selected, and it cannot be doubted that other states will soon follow the example of New York. It is, therefore, most important that it may be determined at the earliest possible moment whether or not such legislation may constitutionally be enacted. Moreover, apart from the precedent established by this act, existing conditions are such as to render

a speedy decision of this cause a matter of great general public interest. The State is collecting over six hundred thousand dollars a month, or twenty thousand dollars a day, from the sale of stamps under this act. This sum is derived from a vast number of sales, each with its own interested parties. No provision exists for the repayment of the sums paid under the act in case it shall be declared unconstitutional, and it would, as a matter of fact, be quite impossible to trace these millions of transactions and reimburse those who have paid the tax. If, therefore, this act is invalid, the State of New York has taken and is daily taking a great sum of money to which it is not entitled, but which it cannot repay even if it should so choose, while thousands of persons are being forced to pay unlawful exactions which they cannot hope to recover.

We earnestly urge upon this honorable Court, therefore, the importance of an early and final decision as to the validity of this tax, to prevent this steady and continuous drain upon the people, if the statute is invalid, and, if it is constitutional, to establish the right of the State to this important source of its income. The matter is of the greatest importance to the State Government. If this tax is invalid there will be immediate need of new tax legislation, and the legislature of the State is to hold its annual session commencing in January, 1907. The State realizes the importance of this matter, and through its Attorney-General joins in the request for an early hearing of this cause.

## III.

The statute not only lays this tax upon all sales and transfers of stock, but it imposes severe penalties, both criminal and civil, for violations of its provisions. Any person who makes a sale of stock without paying the required tax becomes thereby a criminal, guilty of a misdemeanor and punishable by a fine of not less than five hundred nor more than one thousand dollars, or by imprisonment for not more than six months, or by both fine and imprisonment. In addition, he forfeits to the State a "civil penalty" of five hundred dollars.

These criminal and civil penalties coerce the payment of the tax, and therefore justice requires that its validity should be finally determined without delay.

## IV.

Notwithstanding the decisions of the New York courts in this proceeding, grave doubts exist as to the validity of this tax. Although the Court of Appeals was unanimous in its affirmance, in the Appellate Division Mr. Justice INGRAHAM dissented in an elaborate opinion (Record, pp. 25-33). At least one other suit is now pending in the Courts to test the constitutionality of certain amendments to this statute passed in 1906 by the Legislature in developing and expanding the 1905 act,* and these amendments will fall if the 1905 statute is declared unconstitutional. Other suits are contemplated, and many more would doubtless have been brought except for the fact that those interested are relying upon the present proceeding for a test of the constitutionality of the tax. There is a very wide spread interest in this cause, and a general public need for an early and authoritative decision by this Court.

We are aware that this Honorable Court is averse to advancing a cause on its docket, thereby retarding the hearing of other causes having a prior position. We believe, however, that this cause involves questions of such grave import, and of such very general public interest, that it is proper to request the Court, in its discretion, to advance the cause and to set it for an early hearing, and we respectfully move that such action be taken.

JOHN G. MILBURN,
JOHN F. DILLON,
Of Counsel for Plaintiff in Error.

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* PEOPLE EX REL. FARRINGTON VS. MENSCHING, A PEACE OFFICER, in which the Appellate Division of the New York Supreme Court in and for the First Department has recently sustained the constitutionality of these amendments, without opinion, on the authority of *People ex rel. Hatch vs. Reardon*, 184 N. Y., 431. The Farrington case is to be appealed to the Court of Appeals.

# APPENDIX.

## CHAP. 241, LAWS OF 1905.

## AN ACT

TO AMEND THE TAX LAW, BY PROVIDING FOR A TAX ON TRANSFERS OF STOCK.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

SECTION 1. Chapter nine hundred and eight of the laws of eighteen hundred and ninety-six, entitled "An act in relation to taxation, constituting chapter twenty-four of the general laws, is hereby amended by inserting therein a new article to be article fifteen and to read as follows:

### ARTICLE XV.

TAX ON TRANSFERS OF STOCK.

SECTION 315. Amount of tax.
316. Stamps how prepared and sold.
317. Penalty for failure to pay tax.
318. Canceling stamps; penalty for failure.
319. Contracts for dies; expenses how paid.
320. Illegal use of stamps; penalty.
321. Power of State Comptroller.
322. Civil penalty; how recovered.
323. Effect of failure to pay tax.
324. Application of taxes.

SECTION 315. AMOUNT OF TAX.—There is hereby imposed and there shall immediately accrue and be collected a tax as herein provided on all sales, or agreements to sell, or memoranda of sales or deliveries or transfers of shares or certificates of stock in any domestic or foreign association, company or corporation, made after the first day of June, nineteen hundred and five, whether made upon or shown by the books of the association, company or corporation, or by any assignment in blank, or by any delivery, or by any paper, or agreement, or memorandum, or other evidence of transfer or sale, whether

entitling the holder in any manner to the benefit of such stock, or to secure the future payment of money, or the future transfer of any stock, on each hundred dollars of face value or fraction thereof, two cents. It is not intended by this act to impose a tax upon an agreement evidencing the deposit of stock certificates as collateral security for money loaned thereon which stock certificates are not actually sold, nor upon such stock certificates so deposited. The payment of such tax shall be denoted by an adhesive stamp or stamps affixed as follows: In case of sale, where the evidence of transfer is shown only by the books of the company, the stamp shall be placed upon such books, and where the change of ownership is by transfer certificate, the stamp shall be placed upon the certificate; and in cases of an agreement to sell or where the transfer is by delivery of the certificate assigned in blank there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale to which the stamp provided for by this article shall be affixed; and every bill or memorandum of sale or agreement to sell before mentioned shall show the date thereof, the name of the seller, the amount of the sale and the matter or thing to which it refers, and no further tax is hereby imposed upon the delivery of the certificate of stock, or upon the actual issue of a new certificate when the original certificate of stock is accompanied by the duly stamped memorandum of sale.

§ 316. STAMPS HOW PREPARED AND SOLD.—Adhesive stamps for the purpose of paying the State tax provided for by this article shall be prepared by the State Comptroller in such form and of such denominations and in such quantities as he may from time to time prescribe, and shall be sold by him to the person or persons desiring to purchase the same; he shall make provision for the sale of such stamps in such places and at such times as in his judgment he may deem necessary,

§ 317. PENALTY FOR FAILURE TO PAY TAX.—Any person or persons who shall make any sale, without paying the tax by this article imposed or who shall in pursuance of any sale, deliver any stock, or evidence of the sale of any stock or bill or memorandum thereof, without having the stamps provided for in this article affixed thereto, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not

less than five hundred nor more than one thousand dollars, or be imprisoned not more than six months, or by both such fine and imprisonment at the discretion of the court.

§ 318. CANCELLING STAMPS; PENALTY FOR FAILURE.—In every case where an adhesive stamp shall be used to denote the payment of the state tax provided by this article the person using or affixing the same shall write or stamp thereupon the initials of his name and the date upon which the same shall be attached or used, and shall cut or perforate the stamp in a substantial manner, so that such stamp cannot be again used; and if any person fraudulently makes use of an adhesive stamp to denote the state tax imposed by this article, without so effectually cancelling and obliterating such stamp, such person shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than two hundred nor more than five hundred dollars or be imprisoned for not less than six months, or both, at the discretion of the court.

§ 319. CONTRACTS FOR DIES; EXPENSES HOW PAID.—The state comptroller is hereby directed to make, enter into and execute for and in behalf of the state such contract or contracts for dies, plates and printing necessary for the manufacture of the stamps provided for by this article, and provide such stationery and clerk hire, together with such books and blanks as in his discretion may be necessary for putting into operation the provisions of this article; he shall be the custodian of all stamps, dies, plates or other material or thing furnished by him and used in the manufacture of such state tax stamps, and all expenses incurred by him and under his direction in carrying out the provisions of this article shall be paid to him by the state treasurer from any moneys appropriated for such purpose.

§ 320. ILLEGAL USE OF STAMPS; PENALTY.—Any person who shall wilfully remove or cause to be removed, alter or cause to be altered the canceling or defacing marks of any adhesive stamp provided for by this article with intent to use the same, or to cause the use of the same after it shall have been once used, or shall knowingly or wilfully sell or buy any washed or restored stamp, or offer the same for sale, or give or expose the same to any person for use, or knowingly use the same or prepare the same with intent for the further use thereof;

or shall wilfully use any counterfeit stamp or any forged stamp with intent to defraud the state of New York, shall be guilty of a misdemeanor, and on conviction thereof shall be liable to a fine of not less than five hundred nor more than one thousand dollars, or be imprisoned for not more than six months, or by both such fine and imprisonment, at the discretion of the court.

§ 321. POWER OF STATE COMPTROLLER.—The state comptroller may at any time after transfers of stock which by the provisions of this article are subject to a state stamp tax, inquire into and ascertain whether the tax imposed by the provisions of this article has been paid. For the purpose of ascertaining such fact the comptroller shall have the right and it shall be his duty to examine the books and papers of any person, firm, company, association or corporation. If from such examination the comptroller ascertains that the tax provided for in this article has not been paid he shall bring an action in any court of competent jurisdiction for the recovery of such tax and for any penalty incurred by any person under the provisions of this article.

§ 322. CIVIL PENALTY; HOW RECOVERED.—Any person who shall violate the provisions of this article shall in addition to the penalties herein provided forfeit to the people of the State a civil penalty of five hundred dollars for each violation. The State Comptroller shall bring an action in his name as such Comptroller in any court of competent jurisdiction for the recovery of any civil penalty and all moneys collected by him shall be paid into the state treasury.

§ 323. EFFECT OF FAILURE TO PAY TAX.—No transfer of stock made after June first, nineteen hundred and five, on which a tax is imposed by this article, and which tax is not paid, at the time of such transfer, shall be made the basis of any action or legal proceedings, nor shall proof thereof be offered or received in evidence in any court in this state.

§ 324. APPLICATION OF TAXES.—The taxes imposed under this article and the revenues thereof shall be paid by the state comptroller into the state treasury and be applicable to the general fund, and to the payment of all claims and demands which are a lawful charge thereon.

§ 2. This act shall take effect immediately.